IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE L.NARASIMHA REDDY

WRIT PETITION NO : 4707 of 2005

Between:

Smt. Bada Madhavi W/o Vaikuntham
R/o Chapara Village, Meliaputti Mandal, Srikakulam District

... PETITIONER

AND

1 The District Collector (Panchayat Wing), Srikakulam District
2 Gedela Tirumala Rao S/o Appalaswamy
Chapara Village, Meliaputti Mandal, Srikakulam District

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ order or direction more particularly one in the nature of Writ of Certiorari calling for the records relating to proceedings of District Collector, (Panchayat wing) Srikakulam passed in V.Lr. No. 1820/02-A dated 31/01/2005 and quash the same as illegal unjust, contrary to the provision of act, Rules made there under A.P. Panchayt Raj Act 1994 and as being violative of principles of Natural Justice.

Counsel for the Petitioner: MR.P.ANILKUMAR REDDY

Counsel for the Respondent No.1: GP FOR PANCHAYAT RAJ & RURAL DEV.

Counsel for the Respondent No.2: MR.CH.DHANAMJAYA

The Court at the admission stage made the following :

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O R D E R:

The petitioner was elected as a Sarpanch of Chapara village, Meliaputti Mandal of Srikakulam District, in the elections held on 14.08.2001. She hails from Scheduled Caste community, and was elected against a reserved vacancy. The first respondent issued a show-cause notice, dated 27.12.2004, under Section 249 of the A.P. Panchayat Raj Act, 1994 (hereinafter referred to as "the Act"), directing the petitioner to explain as to why action shall not be taken against her, in view of the nine allegations cited in the show-cause notice. Petitioner states that she could not submit the explanation, within fifteen days from the date of receipt of the show-cause notice, on account of the fact that she suffered from enteric fever from 1.01.2005 to 23.01.2005.

According to the petitioner, an explanation was submitted by her on 24.01.2005, through registered post, duly enclosing the medical certificate. The same is said to have been received and acknowledged by the office of the first respondent on 28.01.2005. The first respondent passed an order, dated 31.01.2005, suspending the petitioner for a period of three months, on the ground that she did not submit the explanation to the show-cause notice. Petitioner states that though the explanation was received by the office of the first respondent much before 31.01.2005, it was not taken into account, and thereby, the order dated 31.01.2005 is violative of the principles of natural justice, and contrary to the provisions of the Act.

Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj. Sri Ch.Dhanamjaya, learned counsel for the second respondent, opposed the writ petition.

Section 249 of the Act empowers the first respondent to suspend a Sarpanch, in case any irregularities are found to have been committed. Proviso to sub-section (6) thereof mandates that before any order is passed, the affected party shall be put on notice. It is in this context that the first respondent issued a show-cause notice, directing the petitioner to submit her explanation, within fifteen days from the date of receipt of the show-cause. Petitioner states that though she received the show-cause notice on 31.12.2004, she could not submit the explanation, as she was suffering from enteric fever from 1.01.2005 to 23.01.2005. Had any order been passed by the first respondent, soon after the expiry of the period stipulated for submission of the explanation, it would not have been possible to find fault with the same.

The petitioner had submitted her explanation through registered post on 24.02.2005, enclosing the medical certificate, and the same was acknowledged by the office of the first respondent on 28.01.2005. It is on 31.01.2005 that the first respondent passed an order, suspending the petitioner for a period of three months. It means that by the time the first respondent passed the impugned order, the explanation submitted by the petitioner formed part of the record. Though it was submitted beyond the time stipulated in the show-cause notice, it ought to have been taken into account, since it reached the first respondent before any order was passed. It is quite possible that the explanation submitted by the petitioner may not have been placed before the first respondent, when he took up the matter for passing the order. Irrespective of the stage at which the lapse had taken place, such an omission defeated the very purpose of issuing show-cause notice, and amounts violation of principles of natural justice.

It is true that a remedy of appeal is provided to the petitioner under sub-section (7) of Section 249 of the Act. However, since it is found that the impugned order is violative of principles of natural justice, existence of alternative remedy is not a bar to entertain the writ petition. On the short ground that the explanation submitted by the petitioner was not taken into account, the impugned order deserves to be set aside.

For the foregoing reasons, the writ petition is allowed, and the impugned order dated 31.01.2005 is set aside. It shall be open to the first respondent to pass fresh orders, duly taking into account the explanation submitted by the petitioner. There shall be no order as to costs.

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10th March 2005

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To

1 The District Collector (Panchayat Wing),

Srikakulam District, Srikakulam.
2 Two C.Cs. to the Government Pleader for Panchayat Raj,

High Court buildings, Hyderabad (OUT)

3 Two C.D.copies